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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION ONE

K.D.,

Petitioner,

v.

THE SUPERIOR COURT OF SONOMA
COUNTY,

Respondent;

SONOMA COUNTY HUMAN
SERVICES DEPARTMENT et al.,

Real Parties in Interest.

A156460

(Sonoma County
Super. Ct. No. DEP-5671-01)

K.D. (mother) petitions this court for extraordinary writ relief of a juvenile court order setting a hearing under Welfare and Institutions Code¹ section 366.26 for her child, V.H. She contends there was insufficient evidence to support the juvenile court's order denying her reunification services. We disagree and deny both the petition and mother's stay request.

I. FACTUAL AND PROCEDURAL BACKGROUND

In October 2018, the Sonoma County Human Services Department (Department) placed mother's child, V.H., who was then three months old, in an emergency foster home after mother relapsed on methamphetamine and absconded with V.H. The

¹ All statutory references are to the Welfare and Institutions Code unless otherwise specified.

Department then filed a dependency petition as to V.H. As relevant to the pending writ, the petition alleged mother has a substance abuse problem that places V.H. at substantial risk, and mother was remanded into custody thus rendering her unable to provide care and support for V.H.

The disposition report details mother's long history of substance abuse. Mother began using alcohol and marijuana when she was approximately seven or eight years old. She first tried methamphetamine around the age of 10 or 11 while running away from home. Mother was placed in a residential treatment center at the age of 13 and received substance abuse treatment. She remained sober during that time, but relapsed on methamphetamine around the age of 15. She again obtained sobriety in her late teens, but relapsed when she was 18 following the death of her father. Mother has been involved in the juvenile justice system and the adult criminal justice system due to her chronic substance abuse.

In 2016, mother was arrested for possession of a controlled substance and ordered to participate in a drug treatment program. In 2017, mother met V.H.'s alleged father, and they began using methamphetamine together. She became pregnant with V.H. shortly thereafter and continued to use methamphetamine through the first three months of her pregnancy. Mother then managed to maintain sobriety for two months until she relapsed on alcohol and marijuana.

Mother was subsequently arrested in 2018 for violating probation. In April 2018, she was released from jail and placed into residential treatment at Women's Recovery Services (WRS). Mother gave birth to V.H. while in residential treatment. The disposition report notes that although mother completed the program in August 2018 and participated in approximately one month of aftercare, she struggled to follow the program rules and did not show up for appointments during that time. Mother acknowledges she did not fully utilize the program while at WRS. After completing the program, mother failed to enroll in the Drug Abuse Alternatives Center perinatal program as required, and she did not participate in any services required by probation or Treatment Accountability for Safer Communities (TASC).

In September 2018, mother informed her probation officer she relapsed on methamphetamine, and subsequently tested positive for methamphetamine. She absconded with V.H., a warrant was issued for her arrest, and TASC was terminated. Despite this conduct, the report acknowledges mother was V.H.'s primary caregiver during this period and is "extremely bonded" with V.H. The following month, mother was located by probation during a house search. She informed her probation officer she recently used methamphetamine, alcohol, and marijuana. Mother was reincarcerated for violating probation.

Since her reincarceration, mother has participated in Starting Point and "MRT Therapy." Conflicting evidence was submitted regarding whether mother was participating in Alcoholics Anonymous/Narcotics Anonymous (AA/NA) meetings. Mother also has participated in one 30-minute visit per week with V.H. During these visits, mother is gentle and loving toward V.H.

The Department noted mother would remain incarcerated for approximately two more months, after which she would be eligible for TASC. It explained mother then would need to complete six months of residential treatment. Despite mother's current incarceration and qualification for "a bypass of family reunification services," the Department recommended providing such services. It based this recommendation on a number of factors, including mother's completion of a residential treatment program while pregnant and a four- to five-month window after her release from jail during which she could receive services and demonstrate her ability to address her longstanding substance abuse issue. The report also explained, "Although [mother] initially absconded with [V.H.] after relapsing, [mother] sought out a plan to place [V.H.] with the alleged paternal grandmother. Unfortunately, this plan was not successful, but it shows that [mother] was thinking of an act of protection so her daughter would be cared for while she was unable to do so. Allowing the mother another chance to obtain residential treatment in addition to her receiving other beneficial services to help her maintain her sobriety and address her trauma, would allow this young first time mother an opportunity to make it right for herself and her daughter."

The Department filed an addendum report with the court prior to the jurisdiction/disposition hearing. The addendum report explained mother was presented with two options at her criminal court hearing: spend 90 days in jail until eligible for TASC and complete a drug program, or complete a 24-month sentence at a local prison. The addendum report stated mother opted to complete the 24-month sentence rather than an early release with substance abuse treatment.² Accordingly, the Department changed its disposition recommendation and recommended mother not receive reunification services. The addendum report explained mother had “demonstrate[d] a resistance to drug treatment,” “[g]iven that [mother] has been court ordered to complete substance abuse treatment, relapsed a month after completing treatment, absconded with her child and was on the run for over a month, was arrested and while incarcerated declined the option to obtain substance abuse treatment.” The report further explained, “Seeing as [mother] turned down residential treatment as an option, the likelihood that [mother] will be proactive and check herself into residential treatment upon her release is very unlikely. For these reasons, it does not appear at this time that [mother] would be able to rehabilitate and regain custody within the six-month time constraint of reunification services. [¶] . . . [¶] . . . It is not fair for [V.H.] to wait five months in hopes that her mother will prioritize her sobriety when she hasn’t done so thus far.”

At the contested hearing, the court found the allegations of the petition true. It concluded mother “has a history of extensive, abusive, and chronic use of drugs or alcohol and resisted prior Court-ordered treatment for this problem during a three-year period immediately prior to the filing of the petition which brought the child to the Court’s attention.” Having concluded the required showing under section 361.5,

² This statement in the addendum report appears to be based on information obtained from mother’s probation officer. Mother strongly contests she was presented with an option for early release at her criminal sentencing. The transcript of the sentencing hearing was provided to the juvenile court, but has not been submitted to this court as part of the appellate record. However, even assuming mother’s position is accurate, we conclude the juvenile court did not abuse its discretion in declining to provide mother with reunification services. (See part II., *post.*)

subdivision (b) had been proven, the court then found the presumption in favor of bypassing services was not rebutted. The court ordered mother bypassed for reunification services and set a section 366.26 hearing. Mother subsequently sought writ review.³

II. DISCUSSION

Mother argues the juvenile court erred in denying her reunification services because reunification is in the best interests of V.H. We disagree.

A. Standard of Review

“We review an order denying reunification services under subdivision (b) of section 361.5 for substantial evidence. [Citation.] Under such circumstances, we do not make credibility determinations or reweigh the evidence. [Citation.] Rather, we ‘review the entire record in the light most favorable to the trial court’s findings to determine if there is substantial evidence in the record to support those findings.’ [Citation.] Of course, to the extent our analysis involves statutory interpretation, this is a legal matter which is subject to our de novo review.” (*In re T.G.* (2015) 242 Cal.App.4th 976, 987.)

B. Validity of Bypass Order

“As a general rule, when a child is removed from parental custody under the dependency laws, the juvenile court is required to provide reunification services to ‘the child and the child’s mother and statutorily presumed father.’ ” (*In re T.G.*, *supra*, 242 Cal.App.4th at p. 986.) However, “Section 361.5, subdivision (b) lists a number of situations in which reunification services are likely to be futile and need not be offered to a parent. [Citation.] These exceptions to the general rule reflect a legislative determination that in certain situations attempts to facilitate reunification do not serve the child’s interests. [Citation.] When the juvenile court determines by clear and convincing evidence that one of the enumerated situations exists (§ 361.5, subd. (b)), reunification

³ While mother’s notice of intent to file writ petition was untimely, on February 14, 2019, this court granted mother’s “Motion and Declaration in Support of Finding Good Cause for Late Filing of Notice of Intent to File Writ” and directed the clerk of the Sonoma County Superior Court to accept mother’s notice of intent.

services shall only be ordered if ‘the court finds, by clear and convincing evidence, that reunification is in the best interest of the child’ (§ 361.5, subd. (c)).” (*D.B. v. Superior Court* (2009) 171 Cal.App.4th 197, 202.)

In the present case, the juvenile court denied reunification services to mother based on section 361.5, subdivision (b)(13), which applies when “the parent or guardian of the child has a history of extensive, abusive, and chronic use of drugs or alcohol and has resisted prior court-ordered treatment for this problem during a three-year period immediately prior to the filing of the petition that brought that child to the court’s attention, or has failed or refused to comply with a program of drug or alcohol treatment described in the case plan required by Section 358.1 on at least two prior occasions, even though the programs identified were available and accessible.” (*Ibid.*) The court found mother had twice been offered drug rehabilitation, which satisfied the requirements of section 361.5, subdivision (b)(13).

Mother does not argue section 361.5, subdivision (b)(13) is inapplicable. Nor could she reasonably do so. The record illustrates her ongoing struggles with addiction, including multiple treatment programs followed by her returning to substance abuse. While proof of resistance to treatment “may come in the form of dropping out of programs” during the relevant timeframe, “it may also come in the form of resumption of regular drug use after a period of sobriety.” (*Laura B. v. Superior Court* (1998) 68 Cal.App.4th 776, 780.) Thus, successful completion of the prior treatment program is not relevant, where the evidence shows a return to substance abuse. (*Randi R. v. Superior Court* (1998) 64 Cal.App.4th 67, 73 [failure to maintain “any kind of long-term sobriety” despite completion of rehabilitation programs considered resistance to treatment]; see also *In re Brooke C.* (2005) 127 Cal.App.4th 377, 382 [“Resistance to prior treatment for chronic use of drugs may be shown where the parent has participated in a substance abuse treatment program but continues to abuse illicit drugs.”].) Where, as here, a parent subsequently resumes his or her previous drug lifestyle despite successful completion of a prior substance abuse treatment, substantial evidence supports the conclusion that the parent has resisted treatment for purposes of subdivision (b)(13).

Mother instead argues reunification was likely and services would be in V.H.'s best interests under section 361.5, subdivision (c). Specifically, mother asserts she was engaged in the Starting Point program and AA/NA meetings while incarcerated, she had completed residential treatment at WRS, she intended to enter a residential treatment program upon her release, and she had a strong bond with V.H. Mother further argued she was never offered an early release option by the criminal court, which she contends was the basis for the Department's recommendation she be bypassed for services.

"It is the parent's burden to prove that the minor would benefit from the provision of court-ordered services." (*Jennifer S. v. Superior Court* (2017) 15 Cal.App.5th 1113, 1124.) "The concept of a child's best interest 'is an elusive guideline that belies rigid definition. Its purpose is to maximize a child's opportunity to develop into a stable, well-adjusted adult.' " (*In re Ethan N.* (2004) 122 Cal.App.4th 55, 66.) The factors to consider include " 'the parent's current efforts, fitness, and history; the seriousness of the problem that led to the dependency; the strength of the parent-child and caretaker-child bonds; and the child's need for stability and continuity.' " (*Jennifer S.*, at p. 1124.)

It is clear mother has genuine love and affection for V.H. But even considering that connection and the most favorable evidence in the record regarding mother's renewed efforts at sobriety, we cannot conclude the juvenile court abused its discretion in determining it would not be in V.H.'s best interest to provide reunification services. The record reflects a long history of substance abuse, attempts at sobriety, and relapse. While mother testified she has now realized the seriousness of her addiction, mother did not appear to feel that urgency while pregnant, while hearing about other women at WRS losing their children due to addiction, or while V.H. was in her custody for the first three months of the child's life. Rather, mother exposed V.H. to drugs and alcohol while in utero, she did not follow up with services or attend appointments upon her release from WRS, she resumed using drugs and absconded with V.H., she began residing with friends who were using illegal substances, and she ultimately was located due to a house search conducted by probation.

Mother compares her case to *In re G.L.* (2014) 222 Cal.App.4th 1153 (*G.L.*). In that case, the juvenile court granted services to the mother as being in G.L.’s best interests, despite the mother’s long-term substance abuse problem, lengthy criminal history, and failure to reunify with four older children. (*Id.* at pp. 1161–1163.) The Court of Appeal then affirmed that decision. (*Id.* at p. 1167.)

While there are certainly similarities between *G.L.* and the present matter, there are two key distinctions. First, G.L.’s father was involved and offered services apart from the mother’s situation. (*G.L.*, *supra*, 222 Cal.App.4th at p. 1163.) Thus, in *G.L.*, unlike this case, there was no possibility of expedited finality for the minor. Second, the juvenile court in *G.L.* found by clear and convincing evidence that reunification services *would* be in G.L.’s best interests. (*Ibid.*) The appellate court concluded this determination was not an abuse of discretion. (*Id.* at p. 1166.) Here, however, the juvenile court found reunification services *would not* be in V.H.’s best interests. To reverse this determination, we therefore would need to conclude the juvenile court abused its discretion. We decline to do so. As the *G.L.* court noted in upholding the best interests determination of the juvenile court, the fact “[t]hat there is evidence in the record supporting the opposite finding . . . does not mean the court abused its discretion in finding it was in G.L.’s best interests to reunify with [his mother].” (*Ibid.*)

Our Legislature has recognized time is of the essence in establishing permanence for children under three years of age. (*Tonya M. v. Superior Court* (2007) 42 Cal.4th 836, 846–847.) Although we recognize mother’s recent efforts in this case, the extent of her substance abuse history, her clear resistance to prior court-ordered treatment, and her relatively recent engagement in services indicate mother’s recovery will be a lengthy process. Those considerations, along with V.H.’s young age and need for stability, all weigh against finding error by the juvenile court when assessing V.H.’s best interests. In reviewing the record, we cannot conclude the juvenile court abused its discretion.

III. DISPOSITION

Mother's petition for an extraordinary writ is denied on the merits. (See *Kowis v. Howard* (1992) 3 Cal.4th 888, 894.) Mother's stay request also is denied. The decision is final in this court immediately. (Cal. Rules of Court, rules 8.452(i), 8.490(b)(2)(A).)

MARGULIES, J.

WE CONCUR:

HUMES, P. J.

SANCHEZ, J.

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